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*J.S.R.*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/308,408 06/28/99 FELLINGER

A FLA-0010

QM12/1122  
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EXAMINER

LUONG, S

ART UNIT	PAPER NUMBER
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3728

*#16*

**DATE MAILED:** 11/22/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. <b>09/308,408</b>	Applicant(s) <b>Fellinger</b>
	Examiner <b>Shian Luong</b>	Group Art Unit <b>3728</b>

Responsive to communication(s) filed on Oct 26, 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 16-21 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 16-21 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3728

***Claim Rejections - 35 USC § 112***

1. Claims 18-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 18 and 20-21 are indefinite and inaccurate. Applicant first claims a flexible base film and a flexible covering film in claim 18 and then further define that each chamber comprise two foils which are integrally bonded with each other. It is unclear if the foils are the base and the covering films. Also, if the foils are indeed the films, then it cannot be a polyamide, polyethylene or a sterilization paper because a foil contains metal characteristic and does not have plastic or paper in the foil. For the purpose of this Office Action, the foils are considered as a thin, flexible leaf or sheet of metal. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 16-21 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Zackheim (US 3,162,306) in view of Moser et al (US 3,941,248). Zackheim discloses a package for medical pads comprising an envelope formed by sheet 31 and a lid 34. A plurality of

Art Unit: 3728

compartments are formed based on the number and size of the medical pads. A breaking groove is formed on the laminate to allow a user to break through the lid 34. Zackheim discloses most of the limitations of the claims, except for the foil material. However, Moser et al disclose a roll of blister pack formed by foil base and foil lid. The user can push through the lid to reach the content. Therefore, it would have been obvious to use foil material for the package of Zackheim to prevent bacterial buildup in the groove area and therefore prevents infection.

4. Claims 16-21 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Reid (US 4,574,954) in view of Moser et al. Reid discloses a lid sheet 16 covering a polyethylene sheet 11 with a plurality of depressions for holding articles therein. Since the sheets are flexible, the user pushes through both sheets to obtain the article. Reid discloses all of the limitations of the claims, except for the foil material on the base. However, Moser et al disclose a roll of blister pack formed by foil base and foil lid. The user can push through the lid to reach the content. Therefore, it would have been obvious in view of Moser et al to use foil material for the base of Reid to prevent excess moisture buildup.

#### *Response to Arguments*

5. Applicant's arguments filed on 10/26/2000 have been fully considered but they are not persuasive. Applicant argues that the Moser et al teach that it is only possible to release the product if the chambers are severed from the entire package first. Although Moser et al teach one particular method of removing the content from the package, he also suggests the use of two foils

Art Unit: 3728

to form the package. The foils are thin and therefore maybe punched or forced through either by finger pressure or a pin on either the base or the cover foil. Moreover, applicant's limitation of "the flexible cover foil is torn inward" is merely an intended use statement while the structural limitations is met by the combination of Zackheim with Moser et al or Reid with Moser et al.

Applicant also argues that Reid teaches opening the compartment by pressing on the bubble portion 18 and not pressing through the cover foil. However, both the bubble portion 18 and the film portion 16 are made out of flexible materials. A user can simply choose to break open the compartment by applying finger pressure on the covering film 16 instead of the bubble portion 18. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3728

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Valerie Douglas at (703)308-1337.

For applicant's convenience, the Group Technological Center FAX number is (703) 305-3579 or (703)305-3580. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO

Serial Number: 09/308,408

Page 6

Art Unit: 3728

deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (703) 308-2039.



STL

November 20, 2000